Teamsters Local 75, affiliated with the International Brotherhood of Teamsters, AFL–CIO (Schreiber Foods) ***and*** **Sherry Lee Pirlott and David E. Pirlott.** Case 30–CB–3077

September 1, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX, LIEBMAN, HURTGEN, AND BRAME

This case[1] presents several issues arising from the Supreme Court's articulation of the rights of employees subject to a contractual union-security clause in *NLRB v. General Motors*, 373 U.S. 734 (1963), and *Communications Workers v. Beck,* 487 U.S. 735 (1988). The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order and to adopt the recommended Order as modified and set forth in full below.

The Respondent, Teamsters Local 75, is affiliated with the International Brotherhood of Teamsters (the International). The Respondent pays "per capita taxes" for each of its members to the International, the Central Conference of Teamsters, and Wisconsin Joint Council 39. The Respondent represents approximately 4000 employees in 143 separate collective-bargaining units in and around Green Bay, Wisconsin. Approximately 1600 of these employees are in the dairy industry and 600 are in the food-processing industry. The Respondent represents units of governmental employees as well.

Since 1951, Respondent has represented a collective-bargaining unit of production and maintenance employees employed by Schreiber Foods. The collective-bargaining agreement in effect from 1989 to 1991 between Respondent and Schreiber Foods contained the following union-security clause:

> All present employees who are members of the Union on the effective date of this subsection or on the date of execution of this Agreement, whichever is the later, shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union and all employees who are hired hereafter shall become and remain members in good standing of the Union as a condition of employment on or after the thirty first (31st) day following the effective date of the subsection or the date of this Agreement, whichever is the later.

Between May 1989 and October 1991, Schreiber hired new employees, 65 of whom remained on its payroll at the time of the hearing. All of these employees became members of the Respondent after 31 days of employment and had their dues checked off and remitted to the Respondent. The Respondent's secretary-treasurer testified that the Respondent never informed any of the employees about their rights under *Beck* (and implicitly, under *General Motors*) before they joined the Respondent.

The Charging Parties, Sherry Lee Pirlott and David E. Pirlott, were longtime employees and members of the Respondent. By letter dated September 20, 1989, they jointly resigned from the Respondent and stated their intention to pay for a "financial core obligation" but not for "any non-collective bargaining activity." By letter dated October 19, 1989, the Respondent honored the Pirlotts' resignations, stated that 1.1 percent of its expenditures in the prior year had been for nonrepresentational activities, attached an itemized schedule of expenses and nonchargeable expenses for 1988, and indicated the amount by which the Pirlotts' dues-checkoff deduction would be reduced to reflect those expenses deemed nonchargeable. In subsequent years, the Respondent similarly disclosed its expenditures for 1989, 1990, and 1991.

In the October 19 letter, the Respondent also explained its procedure for challenging and appealing its chargeable expense determinations. The procedure requires a non-member to challenge the disclosure statement within 14 days of receipt therein. The Respondent's Executive Board then has 14 days in which to hear and decide the challenge. Any appeal of the Executive Board's decision must be filed within 10 days to a neutral arbitrator (jointly chosen by the Respondent and the objector) provided by the Wisconsin Employment Relations Commission. In order to resort to arbitration, the employee must first exhaust the internal appeal mechanism (i.e., the appeal of the Executive Board).

The Charging Parties rejected as inadequate both the Respondent's financial disclosure statements and its appeal procedures. They filed unfair labor practice charges on November 8, 1989. The General Counsel issued complaint alleging that Respondent has restrained and coerced employees in violation of Section 8(b)(1)(A) by: (1) maintaining a facially invalid union-security clause requiring full membership in good standing in the Respondent; (2) failing to inform employees by other means of their *Beck* rights; (3) providing inadequate disclosure of the Respondent's expenditures; (4) charging objectors for expenditures incurred beyond their own units; and (5) improperly delaying an objector's access to a neutral arbitral process by requiring the

[1] On September 4, 1992, Administrative Law Judge Joel P. Biblowitz issued the attached decision. Thereafter, the General Counsel and Charging Parties filed exceptions and supporting briefs. The Respondent filed cross-exceptions, a supporting brief, and an answering brief. The Charging Parties filed separate answering briefs in response to the Respondent's cross-exceptions and the General Counsel's exceptions. The Charging Parties also filed a reply brief in response to the Respondent's answering brief.

arbitral process by requiring the objector to exhaust the Respondent's internal appeal process.[2]

I. FACIAL VALIDITY OF THE UNION-SECURITY CLAUSE

In affirming the judge's finding that the union-security clause is not unlawful on its face, we rely on *Marquez v. Screen Actors Guild,* 525 U.S. 33 (1998). In that case, the Supreme Court held that a union does not breach "its duty of fair representation when it negotiates a union-security clause that tracks the language of Section 8(a)(3) without explaining, in the agreement, this Court's interpretation of that language." Id. at 37. Moreover, the Court clarified that, by tracking the statutory "membership" language, a union-security clause incorporates all of the refinements and rights that have become associated with the language of Section 8(a)(3) under *General Motors* and *Beck*. Id. at 300–301. Accordingly, in light of *Marquez,* we find that the complaint allegation that the clause is facially unlawful is without merit because the clause at issue tracks the "membership" language of Section 8(a)(3). Accordingly, we adopt the judge's dismissal of that complaint allegation.

II. GENERAL *BECK* NOTICE ISSUES

The judge also found that the Union did not violate the Act by failing affirmatively to notify all employees hired since May 1989[3] of their rights to be nonmembers and, as such, to object to union expenditures not related to representation in collective bargaining. We disagree. In this regard, we rely on *California Saw & Knife Works*[4] and *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*,[5] which issued after the judge's decision, to find that the Respondent unlawfully failed to provide unit employees' adequate notice of their rights and financial obligations under the union-security clause.

In *California Saw & Knife Works*, and in *Paperworkers Local 1033 (Weyerhaeuser Paper Co.),* the Board addressed several issues involving the *Beck* and *General Motors* rights of employees covered by contractual union-security clauses. In *California Saw*, the Board held that a union violated its duty of fair representation by failing, when seeking to obligate employees to pay fees and dues under a union-security clause, to notify bargaining unit employees who were not union members that they had the right under *Beck* to limit payment of their union-security dues and initiation fees to moneys spent on activities germane to their union's role as a 9(a) bargaining representative.

The Board made two key observations in *California Saw* regarding the issue of notification of *General Motors* rights: first, that the exercise of *Beck* rights is restricted to unit employees who, under *General Motors*, are not full union members but pay union dues and initiation fees as a condition of employment pursuant to a union-security agreement; and second, that without notification of both sets of rights, employees covered by union-security agreements requiring "membership" in the union may be misled to believe that payment of full dues and the assumption of full union membership is required. The Board accordingly held that in addition to informing nonunion employees in the bargaining unit of their *Beck* rights, a union must also tell them of their *General Motors* rights to be and remain nonunion bargaining unit employees. 320 NLRB at 233.

In the companion *Weyerhaeuser* decision, the Board extended the requirement of *Beck* and *General Motors* notice to union members as well as nonmember unit employees (if they had not previously been given the notice). The Board found that the "rationale of *California Saw* for concomitant notice of *Beck* and *General Motors* rights applies with no less force to those who are still full union members and who did not receive those notices before they became members." 320 NLRB at 349. Furthermore, the Board premised the *General Motors* notice violation on the inextricable link between *Beck* and *General Motors* rights, i.e., that an employee may not exercise *Beck* rights without first exercising *General Motors* rights, rather than on the ambiguous language of the parties' contractual union-security clause. In sum, the Board held that "in order for all unit employees subject to a union security provision to exercise their *Beck* rights meaningfully, the law requires that notice of those rights include notice that the only way in which they can do so is to exercise the right under *General Motors* to become nonmembers." Id. at 350. Thus, "when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections." *California Saw*, 320 NLRB at 233. By failing to provide notice of both sets of rights, the Board found in *California Saw* that the union violated Section 8(b)(1)(A) of the Act.[6]

[2] Member Hurtgen notes that there is no evidence of any respondent constitution or bylaw which defines "member in good-standing." If there were, and if the term were defined in ways that go beyond the payment of dues and fees, Member Hurtgen would consider whether the language of the union-security clause in that context was unlawful.

[3] The beginning of the Sec. 10(b) limitations period in this case.

[4] 320 NLRB 224 (1995), enf. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. mem. *Strang v. NLRB*, 525 U.S. 813 (1998).

[5] 320 NLRB 349 (1995), revd. on other ground sub nom. *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), vacated sub nom. mem *Paperworkers v. Buzenius*, 525 U.S. 979 (1998).

[6] The Board has emphasized that a union is afforded a wide range of reasonableness under the duty of fair representation in satisfying these notice obligations. "The form of such notice is not prescribed by the Board, moreover, and 'the union meets [its] obligation as long as it has

In the instant case, the complaint alleges that the Respondent failed to provide "new employees and other new non-members with concurrent information as to how *Beck* objections may be filed." The Respondent, by its secretary-treasurer, stated that it never informed any unit employees hired after May 1989 of these rights prior to their joining the Respondent. Accordingly, applying the principles set forth in *California Saw* and *Weyerhaeuser*, we adopt the judge's finding that the Respondent violated Section 8(b)(1)(A) by failing to provide newly hired unit employees (i.e., employees hired within the 10(b) period) notice of their rights under *Beck* and *General Motors*, prior to obligating them to pay dues under the union-security clause.

III. FINANCIAL DISCLOSURE ISSUES

The judge found that the financial disclosure statements given to the Pirlotts for 1988 and 1989 did not disclose any details beyond major categories of union expenditures, and therefore unlawfully failed to provide those employees with sufficient information so as to make an informed choice as to whether to challenge the figures. Consequently, the judge found that the Respondent violated 8(b)(1)(A) and (2).[7] Again applying the principles of *California Saw*, we reverse the judge and find the Respondent's disclosure statement was sufficient at this stage of the *Beck* objection process.

In *California Saw*, 320 NLRB at 230, the Board held that the standard by which a union's conduct is measured when it exacts funds from objecting nonmembers under a union-security clause is the duty of fair representation. Id. at 228–230. When nonmembers object to a union's use of agency fees, the union must reduce the fee so that it reflects representational expenditures only. The union also must apprise the objector of the percentage of fees being reduced, the basis for the calculation and the objectors' right to challenge the figures.

Consistent with this precedent, *California Saw* requires the union to disclose to the objector a breakdown of its calculations by "major categories" of expenditures, designating which expenditures it claims are chargeable or nonchargeable to objectors. The major categories must be sufficient "to enable objectors to determine whether to challenge" a union's claim that its designated expenditures are for representational activities. *California Saw*, 320 NLRB at 239; *Teamsters Local 166 (Dyncorp Support Services)*, 327 NLRB 950, (1999).

Our dissenting colleague claims that the information provided by the Union was insufficient, and complains that the majority imposes no burden "of good faith" on the union, "or even of plausibility." He claims that, on the face of the information provided in response to the objections, the "figures [are] so inherently inconsistent that no reasonable person could conclude they were accurate."[8] The argument proves too much. The information to be provided to objectors need only be sufficient to enable them to determine whether to challenge the Union's figures.[9] The information provided by the Union herein was clearly sufficient to enable an objector to decide whether to challenge the Union's figures. Indeed, our dissenting colleague effectively concedes that the information provided was sufficient to enable him to question specific categories of expenditures. If he, or an objector, has enough information to question specific categories, then surely he, or the objector, would be able to determine whether to challenge the Union's calculation of chargeable expenses.

Our dissenting colleague also contends that the Board's standard permits a union to include, in its financial disclosure to objectors, numbers that bear no "relation to reality." However, the Board in fact requires that the figures supplied by the union be "verified by a determination that the expenses claimed were in fact made." This determination can be made by an independent audit or supported by a verified local presumption. See *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474, 477 fn. 15 (1999). The union's duty of fair representation—which requires a union to act in good faith—is met if it supplies its major categories of expenditures and supplies verified figures. No allegation was made that the information provided herein was not properly verified, and we find that the major categories were provided.

In essence, the dissent would require a union to give objectors much of the detailed evidence that properly arises only after a challenge has been filed. Although a union must give objectors sufficient information for them to decide whether to challenge the union's percentage figures, the union need not, at that stage, prove that its expenditures are chargeable to the degree asserted. That burden is created only when the employee files a challenge to that figure. *Price v. Auto Workers*, 927 F.2d 88, 94 (2d Cir. 1991). See *Abrams v. Communications Workers*, 59 F.3d 1373, 1381 (D.C. Cir. 1995). Therefore, we do not agree with the judge that the Respon-

taken reasonable steps' to notify employees of their *Beck* rights before they become subject to obligations under the union-security clause." *Weyerhaeuser*, 320 NLRB at 350, quoting *California Saw & Knife*, supra. The same holds true of their *General Motors* rights. Id.

[7] Having found that Respondent generally failed to provide sufficient information, the judge found no need to make a separate finding that the Respondent failed specifically to provide information about how money sent to the International, Wisconsin Joint Council 39, and the Central Conference of Teamsters is spent. The General Counsel has excepted to the judge's failure to make a finding on this point.

[8] We must assume that "accurate" pertains to the correctness of allocating expenses as chargeable or nonchargeable. Neither the General Counsel nor the dissent contends that the union's expense information is inaccurate in any other sense. In particular, they make no argument that the union did not spend the amounts indicated in the categories indicated.

[9] After any such challenge, the Union will be required to establish the representational basis for its claims.

dent's financial disclosure was inadequate because the categories were not sufficiently explained or detailed. Rather, in accord with *California Saw*, we find that the Respondent has satisfied its initial disclosure obligations with respect to all major categories of expenditures.[10] The Respondent provided a financial accounting which designated the expenditures that it had incurred during the previous calendar year and the percentage of each expenditure that it claimed was chargeable. The accounting that the Respondent furnished the objectors, together with a supporting schedule further breaking down the expenditures into the major categories, comports with *California Saw's* requirement of "major category" information.[11]

Our colleague suggests that the Union's information was wholly unreliable. For example, he says that the union reported a nonchargeable expenditure for education and publicity and yet the union claimed that all "salary" expense was chargeable. Our colleague says that this cannot be so, i.e., there had to be *some* salary expenditure for education and publicity. We disagree. It is at least possible that a contractor was hired to do the education and publicity. If the employee objector doubts this, he can file a challenge, and the Union will be put to its proof.

IV. CHARGEABILITY ISSUES

The complaint also alleged that the Respondent unlawfully charged the Charging Parties for activities outside of the bargaining unit. The judge dismissed the allegation. He relied, inter alia, on *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 (1991), a public sector case. The Supreme Court there held that a union may charge objecting employees for "activities [that] were not performed for the direct benefit of the objecting employees' bargaining unit . . . [as long as there is] some indication that the payment is for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization." Id. at 524. The judge here reasoned that "common sense dictates" that the Respondent could therefore properly charge organizational and representational expenses for other units of employees of employers in the same or similar industries. He declined, however, to extend this reasoning to the chargeability of expenses in regard to the Respondent's representation of units of public-sector employees. The judge found that the Respondent, by not segregating the representational expenses of public sector employees, improperly assessed the Charging Parties for these expenses. The judge also found that the Respondent's 1988 financial disclosure statement that only 1.1 percent of all their expenses was nonchargeable was "so implausible as to be a per se violation."

The General Counsel asserts that under *Ellis v. Railway Clerks*, 466 U.S. 435 (1984), a decision interpreting the Railway Labor Act, any expenses spent outside the relevant unit are nonchargeable. Since organizing expenses are, by definition, spent outside the relevant (already-organized) unit, they are nonchargeable (according to the General Counsel's view). The Charging Parties, inter alia, assert that the record contains no empirical evidence to suggest that organizing activity could actually benefit already-represented employees. Finally, the Union, while asserting that the judge correctly found organizing expenses to be germane under the Court's rationale in *Lehnert*, supra, also noted that the judge refused to allow it any significant opportunity to present evidence demonstrating the interaction of various bargaining units represented by the Union and how such activities have a direct impact on the Union's ability to represent individual bargaining units.

For the reasons discussed below, we find that the issues pertaining to the chargeability of union expenses for activities outside the bargaining unit, including organizing expenses and expenses attributable to the representation of public sector employees, shall be severed from the instant proceeding and remanded to the judge. At the time this case was litigated, the Board had not issued its decision in *California Saw* defining the *Beck* obligations of unions in general or, specifically, the standard to be applied in determining the chargeability of union expenditures. With respect to the latter, the Board in *California Saw* held that the legality of charging objectors for a particular union expense depends on "whether they are germane to the union's role in collective bargaining, contract administration, and grievance adjustment." 320 NLRB at 239. The Board further held that a union does not act unlawfully by charging objectors for representational expenses on other than a unit-by-unit basis (id. at 237);[12] nor does it act unlawfully "by charging . . . for litigation expenses as long as the expense is for 'services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization.'" Id. at 239, citing *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507, 524 (1991).[13]

[10] For the reasons set forth in *Teamsters Local 166 (Dyncorp Support Services)*, supra, 327 NLRB at 953, 954, we find no merit in arguments by the General Counsel in exceptions or by our dissenting colleague that the Respondent's disclosure of per capita expenses was unlawfully vague without a breakdown of how affiliated labor organizations spent the money forward to them. It was sufficient for the Respondent to inform objectors of the "per capita tax" that was forwarded to these bodies, as well as the proportion that was spent on nonrepresentational functions.

[11] The "major categories" included: "per capita tax, salaries, expense allowance, contributions, benefits, professional fees, taxes, meeting and committee, automobile, out-of-town travel, education and publicity, stewards, building maintenance, and administrative expenses."

[12] See also *Communications Workers Local 8403 (Pacific Bell)*, 322 NLRB 142, 143–144 (1996), enfd. sub nom. *Finerty v. NLRB*, 113 F.3d 1288 (D.C. Cir. 1997).

[13] Member Hurtgen does not agree that a union representing a unit can charge for litigation expenses incurred in other units. See dissent in *California Saw & Knife Works*, 320 NLRB 224, 239 fn. 78 (1995),

As for organizing expenses, although the General Counsel and our dissenting colleague urge a per se approach based on *Ellis*, the Board has yet to decide their chargeability to objectors. In *Connecticut Limousine Service*, 324 NLRB 633, 637 (1997), a Board majority identified several questions relevant to that determination including, for example, whether the expenditures for organizing were necessary to "preserve uniformity of labor standards in the organized workforce" as asserted by the union therein and "what kinds of employers, either in the Employer's specific industry or in competing industries, the Union might attempt to organize in order to preserve uniform labor standards."[14]

In the absence of this defining precedent at the time that the instant dispute arose, we find it appropriate to sever these chargeability issues from this proceeding and remand them to the judge for further proceedings, including, if necessary, a reopening of the hearing to adduce additional evidence, and for the issuance of a supplemental decision containing findings of fact, conclusions of law, and a recommended Order. In deciding the chargeability of these expenses, the judge shall consider the questions deemed relevant by the Board in *Connecticut Limousine.*[15]

V. REQUIRED APPEAL PROCEDURE

Finally, the General Counsel alleged that the Respondent improperly required the objectors who wish to challenge Respondent's chargeability determination to first exhaust an internal union appeals procedure. The General Counsel contends that this requirement improperly delayed the objector's access to a neutral arbitral process.

The judge relied on the Supreme Court's decision in *Chicago Teachers AFT Local 1 v. Hudson*, 475 U.S. 292 (1986), in finding the appeal procedure to be lawful because it provides for a "prompt decision" by the Respondent's Executive Board before allowing for a further appeal to a neutral arbitrator. The judge also found this procedure to be "fair and reasonable."

In adopting the judge's finding, we rely solely on the appeal procedure's appropriateness under the Respondent's duty of fair representation to the employees which it represents. *California Saw*, 320 NLRB at 230 (unions' obligations under *Beck* are measured by duty of fair representation). We find that the appeal procedure at issue is not arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967); *Air Line Pilots v. O'Neill*, 499 U.S. 65 (1991). In so finding, we rely especially on the appeal procedure's expedient time deadlines, which result in only a minimal delay before a challenge is heard by a neutral arbitrator.[16] Further, such an expeditious step fosters the possibility that corrective action may occur within the union to resolve the challenge. See *Lancaster v. Air Line Pilots*, 76 F.3d 1509, 1522 (10th Cir. 1996).

AMENDED REMEDY

Having found that the Respondent violated Section 8(b)(1)(A) of the Act, we shall order it to cease and desist and take certain affirmative action that will effectuate the policies of the Act.[17] In accordance with *California Saw*, we shall order the Respondents to provide notice in writing to all bargaining unit employees of their rights under *Beck* and *NLRB v. General Motors*, 373 U.S. 734 (1963).[18] The *Beck* notice shall contain sufficient information, for each accounting period covered by the com-

enfd. 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. mem. *Strang v. NLRB*, 525 U.S. 813 (1998).

[14] The Board remanded these questions to an administrative law judge for further record development and for issuance of a supplemental decision setting forth to what extent, if at all, organizing expenses are chargeable to objectors. However, subsequent to issuance of the decision in *Connecticut Limousine*, the case was settled and, hence, no supplemental judge's decision will be forthcoming.

Our colleague has decided that organizational expenses are not chargeable. We will resolve that issue after consideration of all of the evidence as well as the briefs submitted in this case or another appropriate case. Our colleague would resolve that issue before such consideration. We would not do so.

[15] We do not adopt the judge's determination that a per se violation can be found here solely on the basis of the percentage of expenditures that a union claims are not chargeable as representational costs. A union does not violate the Act if it satisfies its burden of establishing that its expenditures are chargeable to the degree asserted. *California Saw*, 320 NLRB at 242. Nor we do pass on the judge's finding that a per se violation can be found on the basis that expenses incurred in the representation of public sector employees could not have inured to the benefit of employees in the Schreiber unit.

[16] We note that the complaint alleges only the unlawfulness of "improperly *delaying* a challenger's access to a neutral arbitral process" by requiring the challenger to first exhaust an internal union appeals procedure. For the reasons stated here, we find that the procedure in dispute does not unlawfully delay the challenge. The complaint did not allege—and the General Counsel did not litigate—the theory that either the appeal or arbitration procedures were unlawful because they were mandatory or threatened the loss of challenge rights for failing to follow them. See *Abrams v. Communications Workers*, 59 F.3d 1373, 1382 (D.C. Cir. 1995) (requiring objectors to exhaust union-provided arbitration before filing legal action violates duty of fair representation by limiting choice of forum). See also *Air Line Pilots Assn. v. Miller*, 523 U.S. 866 (1998) (objectors need not exhaust arbitral remedy before filing legal action). Contrary to our dissenting colleague, we do not find that the cited precedent implies a per se rule that there can be no reasonable requirement to follow an internal challenge procedure absent an express agreement between the Union and the objector. In any event, we reiterate that the complaint here does not present this issue, directly or collaterally.

[17] In agreeing with this dismissal, Member Hurtgen notes that the Respondent informed objectors of the "per capita tax" that was forwarded to these bodies, as well as the proportion that was spent on nonrepresentational functions.

[18] The General Counsel does not allege, as a separate violation, the failure of the Respondents to notify unit employees of their *General Motors* rights. As stated in *California Saw*, however, "*Beck* rights accrue only to nonmembers. Thus, in order to fully inform nonmember employees of their *Beck* rights, a union must tell them of this limitation and must tell them of their *General Motors* right to be and remain nonmembers." 320 NLRB at fn. 57. *Weyerhaeuser* expressly extended this concomitant notice obligation to all unit employees, including "those who are still full union members and who did not receive those notices before they became members." 320 NLRB at 349.

plaint, to enable those employees to decide intelligently whether to object. See, e.g., *California Saw*, supra, 320 NLRB at 233. We shall also order the Respondent to notify in writing those employees whom it initially sought to obligate to pay dues or fees under the union-security clause on or after May 8, 1989, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint. With respect to any such employees who, with reasonable promptness after receiving their notices, elect nonmember status and file *Beck* objections with respect to any of those periods, we shall order the Respondent, in the compliance stage of the proceeding, to process their objections, nunc pro tunc, as it would otherwise have done, in accordance with the principles of *California Saw*. The Respondent shall then be required to reimburse these objecting nonmember employees for the reduction in their dues and fees, if any, for nonrepresentational activities that occurred during the accounting period or periods covered by the complaint in which they have objected.[19]

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 3 and 4:

"3. The Respondent, by failing to notify unit employees, when it first sought to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the right of nonmembers under *Communications Workers v. Beck*, supra, 487 U.S. 735, to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities, has violated Section 8(b)(1)(A) of the Act.

"4. The Respondent has not otherwise violated the Act."

ORDER

The National Labor Relations Board adopts the recommended order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Teamsters Local 75, affiliated with the International Brotherhood of Teamsters, AFL–CIO, Green Bay, Wisconsin, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to notify unit employees, when they first seek to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all unit employees in writing of their right to be or remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(b) Notify in writing those employees whom the Respondent initially sought to obligate to pay dues or fees under the union-security clause on or after May 8, 1989, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

(c) With respect to any employees who, with reasonable promptness after receiving the notices prescribed in paragraph 2(c), elect nonmember status and file *Beck* objections, process their objections in the manner set forth in the amended remedy.

(d) Reimburse, with interest, nonmember bargaining unit employees who file objections for any dues and fees exacted from them for nonrepresentational activities in the manner prescribed in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amount of reimbursement to be paid union nonmember bargaining unit employees who file objections under *Communications Workers v. Beck*, supra, with the Union.

(f) Within 14 days after service by the Region, post at its business offices and meeting halls copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representatives, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Furnish signed copies of the notice to the Regional Director for posting by Schreiber Foods, if willing, at places on its premises where notices to employees are customarily posted. Copies of that notice, to be fur-

[19] Member Hurtgen notes that this reimbursement remedy cannot be fully effectuated until a resolution of the issues of whether organizational and other expenses are chargeable. Accordingly, absent settlement of this matter, he would require that the relevant portion of money be placed in escrow, pending resolution of the issues.

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

nished by the Regional Director, shall, after being signed by the Respondent's authorized representatives, be returned to the Regional Director for disposition by him.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint allegations pertaining to the chargeability of union expenses for activities outside the bargaining unit to *Beck* objectors are severed from this proceeding and remanded to the judge for further proceedings consistent with this Decision and Order.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and recommendations Order. Following service of the supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

MEMBER BRAME, concurring in part and dissenting in part.

In this case, two employees, Sherry Lee Pirlott and David Pirlott, working under a union-security clause, resigned their union membership[1] and objected to financially supporting union activities not related to representing them.[2] The union reduced their monthly service fee slightly, and sent each a document purporting to differentiate between funds spent on representational and nonrepresentational activities. The information, to which the law entitled the employees,[3] should have enabled them to decide whether to challenge the union's figures, or to be reasonably satisfied that the reduction was appropriate. The Pirlotts were not satisfied that they could make such a decision based upon the information furnished. Rejecting the Union's in-house dispute resolution mechanism, they filed charges with the Board against the Union, alleging, among other things, that it had failed to provide timely and sufficient information regarding its expenditures. The judge agreed with the Pirlotts, found that the Union had thereby violated Section 8(b)(1)(A) and (2) of the Act,[4] and ordered it, among other things, to post a notice pledging to "provide objecting nonmembers with a yearly financial disclosure form listing our expenses with sufficient information and clarity for them to make an informed choice as to whether they should object to any of the expenses contained therein." My colleagues, reversing the judge, find that the information satisfied the Union's duty to the employees, despite the presence in the document of facial contradictions rendering accuracy impossible.

I would adopt the judge with respect to his finding that the Union's disclosure was inadequate.[5] I find that my colleagues' approval of what passes here for the information a union must provide to objecting nonmembers violates the letter and the spirit of the Supreme Court hold-

[1] In so doing, they exercised rights accorded them under the Supreme Court's interpretation of the National Labor Relations Act in *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963). In *General Motors*, the Court described the "membership obligation" owed under Sec. 8(a)(3) of the Act by a unit employee to the bargaining representative as membership "whittled down to its financial core." Id. at 742.

Sec. 8(a)(3) of the Act provides in pertinent part that:

It shall be an unfair labor practice for an employer—

> by discrimination in regard to hire or tenure of employment or any terms or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (I) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made . . . . *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization . . . if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

[2] In *Communications Workers v. Beck*, 487 U.S. 735 (1988), the Supreme Court held that, although Sec. 8(a)(3) allows unions and employers to negotiate agreements providing that all unit employees shall pay dues and fees regardless of formal membership, a union lacks authority under Sec. 8(a)(3) to collect from objecting nonmembers fees and dues beyond those necessary as the exclusive bargaining representative of the employees, and violates its duty of fair representation by expending such funds on activities unrelated to its role as the bargaining representative. The Court concluded that its decision in *Machinists v. Street*, 367 U.S. 740 (1961), which made essentially the same holding under the Railway Labor Act (RLA), is controlling for cases arising under the National Labor Relations Act. The Court found that Sec. 2, Eleventh of the RLA and Sec. 8(a)(3) are identical in all material respects.

After *Beck*'s limitation on a union's statutory authority to collect funds for nonrepresentational purposes, and its holding that a union's *expenditure* of such funds constituted a breach of the duty of fair representation, it logically follows that the collection of such funds from objecting nonmembers is a violation of Sec. 8(b)(1)(A).

[3] *Chicago Teachers AFT Local 1 v. Hudson*, 475 U.S. 292 (1986); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). See also *California Saw & Knife Works*, 320 NLRB 224, 239–240 (1995), enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir.1998), cert. denied sub nom. mem. *Strang v. NLRB*, 525 U.S. 813 (1998).

[4] Sec. 8(b) reads, in pertinent part, as follows:

> It shall be an unfair labor practice for a labor organization or its agents–
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.
>
> . . . .
>
> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3).

[5] I would dismiss the 8(b)(2) allegation against the Union, however, as I find no evidence that the Union sought to "cause or attempt to cause [Schreiber] to discriminate against an employee in violation of subsection (a)(3)" with respect to any employee, as that section prohibits.

ings on which the judge relied and which form the basis of the law governing this case. I view this case as important, not simply because basic employee rights are involved, but also because, in its decision today, the majority has set a standard for a union's financial disclosure to objectors so low that virtually any document will suffice as long as it lists the general categories on which the union spends its dues income—categories as general as "salaries," "expense allowance," and "administrative"—and puts numbers next to them. Finding that a union takes on the burden of proof regarding how its expenditures are allocated only at the challenge stage, the Board imposes on the labor organization at the objection stage no burden, not of good faith, or even of plausibility.[6] Regardless of whether its numbers bear any relation to reality, the union will have met what the Board, in following *California Saw & Knife Works*, has set as its standard for the duty of fair representation.[7] Further, where, as here, the Union has refused to permit the parties to go to arbitration because the Pirlotts have declined to participate in a process to which they did not agree, the union will have evaded any review of the figures it gave the Pirlotts.[8] If the majority holds that the union takes on a burden of proof only at the challenge stage, and the union bars the objector from arbitrating a challenge, then it remains for the Board to put the union to the proof that the majority imposes at the challenge stage.

This case also involves several other allegations of violations of the Act. The majority adopted the judge's dismissal of the allegation that the Union violated Section 8(b)(1)(A) and (2) by maintaining a collective-bargaining agreement with a union-security clause requiring employees to be members of the Union in good standing. Like my colleagues, I would dismiss the allegation that 8(b)(1)(A) and (2) were violated under *Marquez v. Screen Actors*,[9] in which the Supreme Court upheld the facial validity of a similar clause.

I did not participate in the Board's decision in *California Saw & Knife Works*, supra, and I express no opinion with respect to the correctness of the Board's implementation there of *Beck* and related Supreme Court precedent. However, on the basis of *Hudson*, supra, and *Marquez*, supra, I agree with my colleagues' reversal of the judge's dismissal of the allegation that the Union violated Section 8(b)(1)(A) by not affirmatively notifying employees of their *Beck* and *General Motors* rights.[10]

The complaint also alleged that notice to objectors was inadequate because the information given contained expenses incurred in organizing other units and in providing services to units other than the objectors' own. The complaint further alleged that the Union required objectors who wished to challenge its determination of the breakdown of chargeable and nonchargeable expenditures to exhaust an internal union appeals procedure, thereby unlawfully delaying a challenger's access to neutral arbitration.

With respect to expenditures outside the unit, the judge found that the Union could charge objectors for organizational and collective bargaining expenses for other units, and he found no violation of Section 8(b)(1)(A) or (2), except for expenses related to public sector units. Thus, he found that the Union violated Section 8(b)(1)(A) and (2) only in the latter respect. The majority severs and remands allegations relating to extra-unit expenditures, including those relating to organizing expenses and expenses related to public-sector units, to ascertain whether

[6] The Supreme Court, Federal courts, and the Board have placed on unions the burden of providing certain financial information to nonmember objectors. In *California Saw & Knife*, supra, for example, on which the majority relies, the Board required that major categories of expenditures be provided objectors. If an objector decides to challenge the figures provided, then the union bears the burden of proof for showing that the figures it provided accurately show the breakdown between chargeable and nonchargeable. 320 NLRB at 242.

[7] The duty of fair representation is a court-constructed principle which affords employees relief from conduct by their bargaining representative that is "arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Originally formulated by the Supreme Court in *Steele v. Louisville & N.R. Co*., 323 U.S. 192, 199–203 (1944), the duty of fair representation states that the union, as the exclusive representative of all employees in a unit, owes each employee a duty to exercise honesty of purpose and good faith in statutory dealings. *Vaca v. Sipes* arose under Sec. 301 of the Labor Management Relations Act, which accords Federal courts jurisdiction over suits by and against labor organizations, including some by employees. A Sec. 301 suit does not involve the issue of whether a union has violated Sec. 8(b)(1)(A), and thus does not consider whether a union has "restrained or coerced" an employee within the meaning of Sec. 8(b)(1)(A).

The Board concluded that the duty of fair representation could be enforced through an unfair labor practice proceeding alleging a violation of Sec. 8(b)(1)(A) of the Act in *Miranda Fuel Co*., 140 NLRB 181 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963), as well as other cases. The Board derived the right from the Sec. 7 right to "bargain collectively through representatives of one's own choosing," and concluded that Sec. 8(b)(1)(A) "prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair." Id. at 185. "Although there is no explicit statutory requirement of 'fair representation,' the Board and the courts have declared a violation of the duty to be a violation of Sec. 8(b)(1)(A)." *NLRB v. Teamsters*, 778 F.2d 207, 213 (5th Cir. 1985), and cases cited there.

[8] The complaint also alleged that that the Union had violated Sec. 8(b)(1)(A) by failing to provide the objectors with timely and sufficient information regarding expenditures made by the International. The judge found that the union failed to provide information regarding the funds the union forwards to the International, but he did not make a separate finding that the union violated Sec. 8(b)(1)(A) by failing to provide such information. See fn. 15, infra.

[9] 525 U.S. 33 (1998).

[10] In *Hudson*, supra, the Supreme Court found that "basic considerations of fairness . . . dictate that potential objectors be given sufficient information to gauge the propriety of the union's fee"; this statement covers the initial notice to any unit employee. 475 U.S. at 306. In *Marquez*, supra, the Supreme Court stated that "[t]here is no disagreement about the substance of the union's obligations: If a union negotiates a union-security clause, it must notify workers that they may satisfy the membership requirement by paying fees to support the union's representational activities." 525 U.S. at 40.

such expenditures are properly chargeable to objectors. Finally, both the judge and the majority agree that the Union did not violate Section 8(b)(1)(A) and (2) of the Act by maintaining its internal dues objection resolution procedure, as it was fair and reasonable under *Chicago Teachers Local 1 v. Hudson*.[11]

I disagree with some of the results reached by my colleagues. I would find that the Union violated Section 8(b)(1)(A) by including expenses incurred in *organizing* other units, both in the public and private sector, as chargeable. Further, I agree with the judge that the expenditures for representing the public-sector units were not chargeable to objectors and I would find that the Union violated Section 8(b)(1)(A) by including these expenditures as chargeable. Like my colleagues, I would sever and remand for findings of fact the issue of whether the Union could show that extra-unit expenditures in (other than organizing expenses) the *private sector* inured to the benefit of the Pirlotts' unit. Finally, I would find that the Union violated Section 8(b)(1)(A) by its attempt to require the Pirlotts to abide by its internal dispute resolution procedure.[12]

I.

The essential facts are undisputed. The union representing the bargaining unit here, and named in the complaint, is Teamsters Local 75, affiliated with the International Brotherhood of Teamsters, AFL–CIO. For nearly 50 years, the Union has represented a production and maintenance unit at the Employer's cheese plant in Green Bay, Wisconsin. Altogether, the Union represents about 4000 employees in 143 bargaining units; about 15 percent of the represented employees are, like the Charging Parties, employed in the dairy industry, with less than 40 percent in other food industry enterprises. The Union also represents, among other occupations, public sector employees. The Union pays per capita fees to its International, to the Wisconsin Joint Council 39, and to the Teamster Central Conference. It has 7 officers and 11 employees, including 6 business agents, of whom 2 are assigned to dairy units, like that involved here. At all relevant times, the unit employees at Schreiber worked under a union-security clause.

The Charging Parties, Sherry Lee Pirlott and David Pirlott, were the only nonmembers of the Union in the Schreiber unit. Both S. Pirlott and D. Pirlott joined the Union when they began work at Schreiber. They resigned on September 20, 1989,[13] by a joint letter, in which they also objected to "paying for any noncollective bargaining activity." By an October 19 letter, the Union's secretary-treasurer, Fred Gegare, gave effect to their resignations, acknowledged their right to object, and informed the Pirlotts that "[a]ccording to our most recent audit, 1.1% of Local 75's expenditures were spent on [nonrepresentational] activities during the last year. This letter provides you with detailed information concerning the breakdown between representational and nonrepresentational expenses." Attached was one page, entitled "Schedule of Expenses and Non-chargeable Expenses Year Ended December 31, 1988," and reproduced in full by the judge. The attachment contained 14 categories, showing a total budget of $1,088,897, with $11,536 for nonchargeable activities, split among three categories: "Contributions" ($700—all nonchargeable), "Per Capita Tax" ($253,202—$6299 nonchargeable), and "Education and Publicity"—($19,127—$4537 nonchargeable). In addition, the letter informed the Pirlotts of the Union's procedure for challenging its chargeability determinations: the nonmember must challenge the disclosure statement within 14 days, after which the Union's executive board has 14 days to hear and decide the challenge. If he is not satisfied, the challenger must appeal, within 10 days, to a neutral arbitrator, jointly chosen by the Union and the challenger.

On November 1, the Pirlotts wrote the Union, protesting that the disclosure was "woefully inadequate," and "tells us nothing about how Local 75 arrived at these figures . . . . Finally, your October 19 letter provides *no* information about the Teamsters International, the AFL–CIO, and all of the other groups with which Local 75 is affiliated" (emphasis in original). The Pirlotts further rejected the Union's internal appeal procedure, and demanded an escrow of all their fees.

By a November 8 letter, Gegare repeated that the nonchargeable percentage of the Union's expenses was 1.1 percent, and that the Union would escrow the money. He also informed them that at the end of the new fiscal year the Union would notify them of their opportunity to object.[14] Both of the Pirlotts received a reduction in their dues and a refund of $1.65.

II.

As noted above, the judge found that the Union had violated Section 8(b)(1)(A) in failing to provide adequate financial disclosure to the Pirlotts. He found that the union's allegation that only 1.1 percent of their expenses were nonchargeable "so implausible as to be a per se violation." He dismissed the allegation that the Union violated the Act by failing to provide the Pirlotts with information about the International, an agent of the Union, on the technical ground that the evidence was insufficient to establish that agency. The judge strongly stated his view, however, that the Union was obligated to in-

[11] 475 U.S. 292 (1986).

[12] I would dismiss the allegations that the Union violated Sec. 8(b)(2), with respect to chargeability and dispute resolution, for lack of evidence that the Union caused or attempted to cause the employer to discriminate against an employee in violation of Sec. 8(a)(3).

[13] Unless otherwise noted, all subsequent dates shall be in 1989.

[14] The judge credited Gegare's testimony that he followed up on their objection and wrote further letters to them and to Schreiber altering the amount of their deductions according to the amount the Union had determined was nonchargeable.

form the Pirlotts and other potential objectors respecting how the money forwarded to the affiliated organizations is spent. In view of his finding of a per se violation, however, he considered a finding of a separate violation unnecessary.

I agree with the judge, with the exception that I would also find that the Union separately violated the Act by failing to provide information with respect to the per capita funds passed on to the International.[15] As, under certain circumstances, it may not be impossible for a union (such as an independent) to have yearly expenses that are 98.9 percent, or even 100-percent chargeable, I will not base my conclusion on the percentages declared by the Union,[16] but rather on the document's facial inconsistencies. These inconsistencies would certainly alert a careful objector to the unsatisfactory nature of the figures the Union had given him; but it is the Union's obligation to provide sufficient information for the objector to decide whether to challenge the figures, not to provide figures so inherently inconsistent that no reasonable person could conclude that they were accurate. The Union's obligation, then, is one of positive action, or commission; it is not satisfied, as the majority here appears to believe, by omission.

The law governing the information the Union must provide the Pirlotts as objecting nonmembers has its origins in suits in the public sector and under the Railway Labor Act (RLA) challenging the constitutionality of union and agency shops, on the ground, among others, that exaction of dues to support activities not germane to collective bargaining violates employees' First Amendment rights.[17] The Supreme Court held that agency shops were permitted under the RLA and the Constitution only insofar as employees who objected to the expenditure of their funds on nonrepresentational activities were shielded from the compulsion to support them.[18] In *Beck*, as noted supra, the Court held that under the NLRA, a union could charge objecting nonmembers only "those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'"[19]

Because the *Beck* Court based its interpretation of the Act on its finding that Congress intended that Section 2, Eleventh of the RLA and Section 8(a)(3) are statutory equivalents,[20] the whole body of Supreme Court law developed in RLA cases and in the public sector is relevant to ascertaining Congressional intent in the Act. For our purposes here, the focus is the procedural protections to be accorded nonmember objectors. With respect to notifying employees of the basis on which a union had figured the reduction in fees for activities not chargeable to them, the key case is *Chicago Teachers Local 1 v. Hudson*.[21] *Hudson* built upon an earlier decision, *Abood v. Detroit Board of Education*, supra, in which the Court had held that agency shop clauses could pass constitutional muster under certain circumstances and examined the procedures a public employees' union had established to protect objectors' rights. The Court held that the "constitutional requirements for the Union's collection of agency fees include *an adequate explanation of the basis for the fee*, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending."[22] The Court's holding, while it discusses the union's procedures in constitutional terms, has immediate relevance to the NLRA, as the Court had earlier made the point that

> [b]asic considerations of fairness . . . also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the nonunion employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information—does not adequately protect the careful distinctions drawn in *Abood*.[23]

The Court did not intend to impose unreasonable burdens on bargaining agents—it had recognized in *Abood* that "[t]here will, of course, be difficult problems in drawing lines between collective bargaining activities, for which contributions may be compelled, and ideologi-

[15] A strict agency relationship between a local union and its affiliated organizations is not necessary for a finding that, if the local is the entity responsible for providing financial information to objectors, and it partially or fully subsidizes the affiliate with revenue obtained from dues, then it is obligated to provide information concerning the affiliate's expenditures—or face an allegation that it has violated Sec. 8(b)(1)(A).

I find merit in the General Counsel's exception to the judge's failure to make a separate finding on this issue. I would amend the conclusions of law, recommended Order, and notice to separately show the union's failure to provide such information as a violation of Sec. 8(b)(1)(A).

[16] Like the judge, however, I find these figures inherently unbelievable.

[17] See, e.g., *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); *Machinists v. Street,* 367 U.S. 740 (1961).

[18] See, e.g., *Abood*, supra (insofar as agency fees are used to finance costs of collective bargaining, contract administration, and grievance adjustment, the agency shop clause in that public sector case was valid); *Railway Employees v. Hanson*, 351 U.S. 225 (1956) (union-security clause under RLA was not unconstitutional on its face; no evidence that dues were being spent for activities not germane to collective bargaining; if so, the Court stated, another problem would be presented); *Machinists v. Street*, 367 U.S. 740 (1961) (while the Court upheld the validity of a union-security clause under the RLA, the record contained evidence that dues had been spent on political activities; the Court held that the use of compulsory union dues for political purposes violated the RLA itself).

[19] 487 U.S. at 762–763 (citation omitted).

[20] Id. at 745–746.

[21] 475 U.S. 292 (1986).

[22] Id. at 310 (emphasis added).

[23] Id. at 306. Regardless of whether constitutional standards are applied to cases arising under the Act, the concept of "basic considerations of fairness" provides a sufficiently strong link to policies with which Congress has imbued the labor laws in the private sector to render *Hudson* and other public sector cases of precedential value.

cal activities unrelated to collective bargaining, for which such compulsion is prohibited"[24]—so it noted that "[t]he union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses."[25] The Court cautioned, however, that, for instance, "[w]ith respect to an item such as the Union's payment of $2,167,000 to its affiliated state and national labor organizations . . . either a showing that none of it was used to subsidize activities for which nonmembers may not be charged, or an explanation of the share that was so used was surely required."[26] The Court made the point again that the

> advance reduction of dues was inadequate because it provided nonmembers with inadequate information about the basis for [their] proportionate share. In *Abood*, we reiterated that the nonunion employee has the burden of raising an objection, but that the union retains the burden of proof: since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion.[27]

In holding that employees working under the RLA and in the public sector could not be obligated to exhaust union internal dispute resolution mechanisms devised by a union to satisfy *Hudson* before taking advantage of their judicial remedies, the Court explained further in *Air Line Pilots Assn. v. Miller*[28] that

> Agency fee challengers, like all other civil litigants, must make their objections known with the degree of specificity appropriate at each stage of litigation their case reaches: motion to dismiss; motion for summary judgment; pretrial conference. The very purpose of *Hudson*'s notice requirement is to provide employees sufficient information to enable them to identify the expenditures that, in their view, the union has improperly classified as germane.[29]

While the Court in *Miller* did not ignore the discovery stage of civil litigation, it is plain from its comments that it expected objectors to receive enough information to make a reasonable and intelligent analysis of where disagreements may lie.

In *California Saw & Knife*, the Board adopted the *Hudson* standards and applied them to the information provided to objectors by the union in that case, the International Association of Machinists. In finding that the union had not breached its duty of fair representation or violated Section 8(b)(1)(A) with respect to the information provided, the Board examined

> information detailing the percentage reduction in dues based on the previous year's expenses, as well as a summary of the major categories of expenditures, showing how the reduction was calculated. Since 1990, the IAM has further provided objectors with a summary of the District and Local Lodge surveys that comprise the District and Local portion of the dues deduction. The IAM does not, however, provide objectors with the supporting schedules mentioned in the summary of the District and Local lodge surveys, nor the IAM's audit protocol on which it relies to determine chargeability.[30]

Without passing on the Board's conclusion in *California Saw & Knife* that the union had not violated 8(b)(1)(A), I note that the Board there was presented with a disclosure of a very different caliber than that set before us. Despite the Board's comment in *California Saw & Knife* that "courts that have considered the information to be provided objectors in the public sector context require only that the union's major categories of expenditures be disclosed,"[31] the very wording used by the Court and even the Board itself demonstrate that nothing resembling the document before the Board today was contemplated. In *Hudson*, the Court excused unions from providing "exhaustive" disclosures when it stated that "basic categories of expenditures" must be provided. The Court would expect a "showing" as to the use of the union's payment to its affiliated organizations and, in reiterating that the burden is on the union with respect to figures relating to expenditures, spoke of records "from which the proportion . . . can reasonably be calculated." In *California Saw & Knife*, the Board described a showing "detailing" the percentage reduction, and "showing" how the reduction was calculated, and providing a summary of the surveys that underlie affiliates' expenditures.

[24] *Abood*, supra, 431 U.S. at 236.
[25] *Hudson*, supra, 475 U.S. at 307 fn. 18.
[26] Id.
[27] Id. at 306. (Citations omitted.)
[28] 523 U.S. 866 (1998).
[29] Id. at 878.
[30] 320 NLRB at 239.
[31] Id. For the majority to rely on this statement to justify its dismissal of the allegation here is disingenuous at best. The Court has required unions to provide major categories, as opposed to the minutiae of all subheadings underlying those categories. Further, in *California Saw & Knife*, the Board was faced with the General Counsel's argument that "the information disclosed to objectors is unlawfully insufficient because it does not include the supporting schedules and audit protocol described above." Id. It is in this context that the Board held that major categories of expenditures was sufficient disclosure. While I do not pass on the rationale of *California Saw & Knife*, I cannot believe that the Board intended to convey to future panels and courts that the disclosure of general categories of expenditures *and nothing else* would be sufficient to satisfy the union's duty, however it is formulated. If the Board in *California Saw & Knife* had been faced with a disclosure as unrevealing as that presented here, or if the information provided nonmembers there had had obvious facial inconsistencies, I am not certain that its ruling would have been the same.

None of these describes what the Union has provided here. In fact, this language itself indicates that none of these bodies had before it a disclosure as patently inadequate as that before us.

In this case, simple logic demonstrates the unreliability of the Union's figures. Even supposing that 1.1-percent nonchargeable expenditures is an accurate figure, all salaries, all expenses, all benefits, all professional fees, all meeting and committee costs, all building maintenance expenses, and all administrative expenses cannot then be chargeable. It could not be that no ripple effect would be felt from even so small a nonchargeable outlay. With respect to salaries, some employee must have spent some time doing "education and publicity," a partially nonchargeable category. Thus, the information provided the Pirlotts is worse than "woefully inadequate." It lacks even the illusion of adequacy.

I will not detail here what formula a union must follow to satisfy *Hudson*. I maintain, however, that the Court must have intended, when it held that unions must provide sufficient information for an objector to decide whether to challenge the union's figures, that the information meet the following basic criteria. First, the information must be accurate. Second, it must contain enough explanation of the basic categories of expenditures so that this level of disclosure has some actual and legal meaning, and does not simply throw the objector into the challenge stage. Third, it must disclose enough information about union expenditures so that a reasonable objector can decide, not simply that the entire submission is suspect, but *which* categories raise red flags and should be called into question, and which are sufficiently likely to be correct that questioning them would not be fruitful.

III.

With respect to the complaint allegations that the Union violated Section 8(b)(1)(A) by charging objectors for expenses incurred outside the unit, I look to the Supreme Court's decisions in *Ellis v. Clerks* [32] and *Lehnert v. Ferris Faculty Assn*.[33] for authority on the issue of extra-unit expenditures. In *Lehnert*, the Supreme Court stated that it would not interpret the "germane to collective bargaining" test "to require a direct relationship between the expense at issue and some tangible benefit to the dissenters' bargaining unit."[34] The Court took a factual approach to the issue: that most unions operate under a unified structure, with much sharing of resources and interrelationship. The Court noted that *Ellis* construed the RLA to allow objectors' dues to be used for maintenance of its existence as an institution.[35]

[32] 466 U.S. 435 (1984).
[33] 500 U.S. 507 (1991).
[34] Id. at 522.
[35] Id. at 523.

Although the *Lehnert* Court is referring in the quoted language to expenses associated with affiliation with a parent organization, it seems that the same fact-based, case-by-case analysis would be appropriate in judging whether expenses defraying the costs of maintaining other units provide a similar benefit to the objector's unit. Thus, while I agree with the judge's finding that the Union violated Section 8(b)(1)(A) by charging the Pirlotts for expenses associated with public sector bargaining units,[36] and I find no need to remand this issue to the judge, I join my colleagues as to the remand of the issue of whether the expenses associated with other private-sector units to the judge. I would seek evidence from the Union that such a benefit exists. "There must be some indication that the payment is for services that may ultimately inure to the benefit of the members of the local union . . . . And, as always, the union bears the burden of proving the proportion of chargeable expenses to total expenses."[37] Further, the union would bear the burden of showing that the objector's unit receives a benefit from its financial support of activities in another local. My colleagues would also remand the issues of organizing expenses for similar factual findings. I find a remand unnecessary. The Supreme Court has clearly held that organizing expenses are not chargeable to objectors.[38] I would find that the Union violated Section 8(b)(1)(A) by charging the Pirlotts for organizing expenses.

Finally, as noted above, the complaint alleges that the Union violated Section 8(b)(1)(A) by "requir[ing] objectors who wish to challenge respondent's determination of its chargeable and its non-chargeable expenditures, to first exhaust an internal union appeals procedure, thereby improperly delaying a challenger's access to a neutral

[36] The judge reasoned that *Lehnert* and other cases permitted unions to charge objectors for expenses incurred in servicing other units. He found, however, that in this case, where the union represents employees in the public as well as the private sector, the requisite showing that the Union's expenditures for employees working in the *public* sector would ultimately inure to the benefit of the Pirlott's unit could not be made. For example, there is no competition among the employers in the public and private sector, and wage pressures are dissimilar in the two areas. Therefore, he found that expenses related to public sector units nonchargeable. As noted above, I agree with this aspect of his analysis.

[37] Id. at 524.

This finding illustrates the quandary in which the majority puts objectors by dismissing the violation relating to the arbitral process. The majority performs no factual analysis of this issue. Because the Pirlotts refused to participate in the initial steps of the internal resolution process, the Union will not permit them to go to arbitration. Thus, there is no review of the Union's figures in any forum.

[38] In *Ellis v. Railway Clerks*, 466 U.S. 435, 451–453 (1984), the Supreme Court held that Sec. 2, Eleventh of the RLA did not permit unions to charge objectors for organizing expenses outside the unit. The Court could not have made it plainer in *Beck* that RLA Sec. 2, Eleventh and Sec. 8(a)(3) of the Act are statutory equivalents. 487 U.S. at 745. Thus, in my view, there can be no question of the chargeability of organizing other units, especially as *Ellis* considered and rejected the practical reasons why such expenses may inure to the benefit of the objector's unit. I find it puzzling that the majority does not address *Ellis*.

arbitral process." My colleagues agree with the judge that the Union's appeals procedure is fair and reasonable under *Hudson*, and would dismiss the complaint on this basis. I disagree. I find that, by ignoring the case law holding that *Hudson*-type dispute resolution procedures must be the product of agreement between the union and the objector, my colleagues have reached the wrong result.

In my analysis of this issue, I advert to facts not recorded by the judge, but contained in exhibits offered and uncontested by the parties. The record shows that in the Union's November 8, 1989 letter to the Pirlotts, Fred Gegare informed them that "our internal union procedure, which culminates in a final and binding decision by an impartial third-party, is clearly lawful. . . . [W]e consider that you have waived any objection you may have had to payment of the full 98.8% of dues money spent on lawful, chargeable activities. Because you have waived your objection, we intend to deduct these amounts pursuant to your checkoff agreement for the balance of the union's fiscal year." The policy itself is stated in terms of imperatives: "Your written objection must . . . specify the precise nature of your objection and the exact dollar amount or percentage of our expenses which you claim is non-chargeable."

This policy is coercive on its face in that it indicates to objectors that unless they pursue the Union's chosen mechanism for dispute resolution, they lose their opportunity to challenge the Union's breakdown. In imposing, or appearing to impose, on nonmembers the choice between following the Union's procedure step-by-step or losing the opportunity to challenge the Union's figures, the Union clearly oversteps its authority as bargaining representative and violates Section 8(b)(1)(A).

The rationale put forward by both my colleagues and the judge for finding that the Union's imposition of its internal dispute resolution procedure is lawful suffers from the same misapprehension of the law that underlies Gegare's letter to the Pirlotts. Each begins with the predicate that *Hudson* requires a union in the public sector to provide nonmembers an opportunity expeditiously to settle disputes over a service fee, and assumes that, since the Union here has provided such a mechanism, the Union can require nonmembers to adhere to its chosen procedures.[39] "The problem with this proposition it that it confuses the union's presumed responsibility to provide a means of dispute resolution with its ability to *force* non-union members to use its selected method."[40]

The court addressed the issue of union authority to impose dispute resolution procedures in *Abrams v. Communications Workers,*[41] in which nonmember unit employees brought a Section 301 suit against their union alleging a breach of the duty of fair representation. The D.C. Circuit Court of Appeals concluded that

> CWA's procedure requiring an objector who challenges the allocation of chargeable and nonchargeable expenses to exhaust Union-provided arbitration violates its duty of fair representation by limiting the choice of forum for the challenge. "The law compels a party to submit his grievance to arbitration only if he has contracted to do so."[42]

With respect to the creation of internal dispute resolution mechanisms under *Hudson*, then, the Court intended that two basic requirements be present. First, the union must provide "a reasonably prompt decision by an impartial decisionmaker."[43] Second, even if the procedure satisfies the first requirement, it cannot be imposed on a nonmember without that nonmember's agreement. In RLA cases such as *ALPA v. Miller*, supra, the alternative to a union's route to arbitration is a Federal court suit. *Mille*r holds that employees may proceed directly to that forum, regardless of the fairness of the union's procedures, as long as they have not agreed to abide by them. Thus, my colleagues miss an important point in their analysis: the Union violated Section 8(b)(1)(A) here not because its procedures were unfair, but because the Union indicated to the Pirlotts that if they did not abide by the internal procedures, their interests would be prejudiced and their challenge dismissed. What is relevant is that Gegare sought to coerce the Pirlotts into following the Union's procedure by telling them that if they did not do so, they would lose something—their right to challenge its figures. Thus, the Union cannot do, no matter how fair and reasonable its route to arbitration may be. These standards are separate, and a union's failure in either aspect leaves it open to a finding that it has violated Section 8(b)(1)(A). Thus, I would find that, absent an agreement to arbitrate fee disputes between the Union and the objector, the union has no authority to impose, or to appear to impose, an internal dispute resolution mechanism on an objector.

Further a union violates Section 8(b)(1)(A) under *Scofield v. NLRB*[44] if it *requires* a nonmember to abide by an internal union rule, including a dispute resolution mechanism.

A dispute resolution process that is required by the union is an attempt unilaterally to restrict a unit member's options, and is thus a union rule. It cannot be enforced, even by fine or expulsion, without violating Section 8(b)(1).[45] In *Scofield*, the Supreme Court held that "Sec-

[39] I do not pass on the necessity of a union maintaining such a mechanism under the NLRA.

[40] *Commercial Workers Local 951 v. Mulder*, 31 F.3d 365, 367 (6th Cir. 1994).

[41] 59 F.3d 1373 (D.C. Cir. 1995).

[42] Id. at 1382. (Citation omitted.)

[43] *Hudson*, supra, 475 U.S. at 309.

[44] 394 U.S. 423 (1969).

[45] Id. at 429. In *NLRB v. Marine & Shipbuilding Workers*, 391 U.S. 418 (1968), the Court agreed with the Board that employees must be free from coercion in making complaints to the Board.

tion 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule."[46] Under *Scofield*, one inquiry is whether the rule impairs any policy Congress has imbedded in the labor laws. The requirement that an employee be obliged to follow an internal union process does impair the Congressional policy that, within the framework of the Act, an employee should be free to choose his relationship with its bargaining representative. If the employee has agreed to the process, then there is no impairment of freedom. If the employee has not agreed, and thereby loses his opportunity to have his dispute aired, then the policy of freedom is violated. *Scofield* also inquires whether the rule is reasonably enforced against union members free to resign from the union and escape the rule. Clearly it is not, as the individuals against whom the Union enforced it—the Pirlotts—have resigned and thus cannot escape the rule in any way. Under *Scofield*, then, a union cannot *enforce* an internal mechanism for dispute resolution with objecting nonmembers without violating Section 8(b)(1)(A).[47]

Thus, in contrast to my colleagues, I would find that the Union violated Section 8(b)(1)(A) by providing incomplete information to the Pirlotts such that they were unable to decide whether to challenge the figures provided, as well as by failing to provide information with respect to the International Union. Further, I would find that the Union violated Section 8(b)(1)(A) by including organizing expenses and expenses associated with servicing public sector bargaining units as chargeable in their financial disclosure. I would find that the Union violated Section 8(b)(1)(A) by its attempt to require the Pirlotts to abide by its internal dispute resolution procedure.[48] I join my colleagues in adopting the judge's dismissal of the union-security clause allegation on the basis of *Marquez*, supra. I also join them in finding that the Union violated Section 8(b)(1)(A) by failing to give the Pirlotts proper notice of their *General Motors* and *Beck* rights, and in remanding for findings of fact on whether extra-unit expenditures in the private sector, other than organizing expenditures, could be shown by the Union to inure to the benefit of the Pirlotts' unit.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify unit member employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify all unit employees in writing of their right to be or remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

WE WILL notify in writing those employees whom we initially sought to obligate to pay dues or fees under the union-security clause on or after May 8, 1989, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

WE WILL process the *Beck* objections of any employees whom we initially sought to obligate to pay dues or fees under the union-security clause on or after May 8, 1989, who elect nonmember status and file objections with reasonable promptness after receiving notice of their right to so object.

WE WILL reimburse, with interest, unit employees who file objections for any fees exacted from them for nonrepresentational activities for each accounting period since May 8, 1989.

TEAMSTERS, LOCAL 75, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL–CIO

Gerald McKinney, Esq., for the General Counsel.
Frederick Perillo, Esq. and *Scott D. Soldon, Esq. (Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C.),* for the Respondent.

[46] *Scofield*, supra, 394 U.S. at 430.

[47] Of course, I do not imply that a voluntary dispute resolution mechanism is prohibited. On the contrary, where the objector has agreed to the process, it is the result of a simple contract between parties.

[48] As previously noted, I would dismiss all allegations that the Union violated Sec. 8(b)(2) for lack of evidence.

Glenn M. Taubman, Esq., National Right to Work Legal Defense Foundation, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on March 5, 1992, in Green Bay, Wisconsin. The complaint, which issued on September 30, 1991, was based on an unfair labor practice charge filed on November 8, 1989,[1] by Sherry Lee Pirlott and David E. Pirlott. The violations alleged herein emanate from *Communications Workers v. Beck*, 487 U.S. 735 (1988) (*Beck*). There are a number of violations alleged: first, there is the allegation that the union-security clause contained in the collective-bargaining agreement between Teamsters Local 75, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (Respondent) and Schreiber Foods (Schreiber) is unlawful under *Beck* because it fails to inform employees of their *Beck* rights, and further that Respondent failed to provide employees or applicants for employment at Schreiber with notice of their *Beck* rights to refuse to be a member of the Union while working for Schreiber, which also is alleged to violate the Act. Another issue is whether the financial disclosure Respondent provided to the Pirlotts was adequate, and whether, under *Beck*, a union is limited to the expenditures it incurred in the objector's unit or whether a union can charge objectors for expenditures in all units it represents. As Respondent represents private employers (such as Schreiber) as well as governmental employees (employees of the city of Green Bay, for example) an additional issue in this category is whether Respondent violated the Act by charging the Pirlotts for expenses it incurred in representing its public sector employees. The final allegation is that by requiring objectors to first appeal to Respondent's executive board, and then to the Wisconsin Employment Relations Commission, Respondent violated the Act as well. It is therefore alleged that Respondent violated Section 8(b)(1)(A) and (2) of the Act.

On the entire record, including the briefs received from the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Schreiber, a corporation with an office and place of business in Green Bay, Wisconsin (the facility), has been engaged in the business of producing cheese and related food products. During the past calendar year, Schreiber sold and shipped goods valued in excess of $50,000 directly to points located outside the State of Wisconsin and, during the same period of time, purchased and received goods and materials valued in excess of $50,000 directly from points located outside the State of Wisconsin. Respondent admits, and I find, that Schreiber is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

[1] Unless indicated otherwise, all dates referred to relate to 1989.

III. THE UNION-SECURITY CLAUSE—FACTS AND ANALYSIS

The facts here are fairly direct and generally undenied. Since about 1951 Respondent has represented Schreiber's production and maintenance employees at its facility in Green Bay, Wisconsin, excluding office employees, supervisors and guards as defined in the National Labor Relations Act. The most recent contract between the parties is effective for the period February 20 through October 3, 1992. Article 3 of this contract is entitled "Union Security'':

> All present employees who are members of the Union on the effective date of this subsection or on the date of execution of this Agreement, whichever is the later, shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union and all employees who are hired hereafter shall become and remain members in good standing of the Union as a condition of employment on or after the thirty first (31st) day following the beginning of their employment or on and after the thirty first (31st) day following the effective date of the subsection or the date of this Agreement, whichever is the later.

Between May 1989 and October 1991, Schreiber hired new employees, of whom 65 remained on its payroll as of the date of the hearing; some were on leaves of absence at the time. All of these employees became members of Respondent sometime after their 31 days of employment with Schreiber and had their dues checked off and remitted to Respondent. The Charging Parties are the only employees of Schreiber who are not full members of Respondent.

Fred Gegare, secretary-treasurer of Respondent, testified that the Respondent never informed these post-May 1989 employees of Schreiber of any of their *Beck* rights prior to the time they joined the Respondent. Donald Delvaux was hired by Schreiber on October 19 and joined the Respondent on September 17, 1990. He testified that shortly before that date Sheila Wanta, Schreiber's personnel manager, told him that he had to join the Respondent in order to keep his job at Schreiber. He went to Respondent's hall on September 17, 1990, and spoke to Respondent's recording-secretary, Tony Cornelius, and asked him why he had to join the Respondent. Cornelius said that all employees at Schreiber had to join because it was in the contract and he showed Delvaux the contract and the union-security clause. Nobody from the Respondent ever told him that he could object to becoming a full member of Respondent, nor did they ever inform him of any of the *Beck* rights.

The General Counsel alleges that the union-security clause in the contract between Schreiber and Respondent violates the Act as it does not state that the only condition of employment is the payment of initiation fees and dues. The General Counsel also alleges that Respondent has an affirmative obligation to inform all new employees—soon to be members—of their *Beck* rights, and, having failed to do this, Respondent further violated the Act.

In *Keystone Coat, Apron & Towel Supply Co*., 121 NLRB 880 (1958), the Board proposed model language for a union-security clause, and the language of the union-security clause contained in the contract between Respondent and Schreiber is consistent with the suggested language of *Keystone*. It is clear that since *Union Starch & Refining Co*., 87 NLRB 779 (1949), and *NLRB v. General Motors Corp*., 373 U.S. 734, 742 (1963), this membership obligation is limited to the payment of initia-

tion fees and dues. In the often-quoted language of the Supreme Court in *General Motors*: "membership as a condition of employment is whittled down to its financial core.'' Although there is no dispute that this is still the law, General Counsel alleges that the union-security clause must spell out these limitations. Admittedly, the union-security clause in question did not do so and it is alleged that it therefore violates the Act. In support of this argument, General Counsel argues that few, if any, of the Schreiber employees have read any of the Board and Court cases that say that their obligation is limited to paying the usual initiation fee and dues. General Counsel's brief states:

> [E]mployees would read the language literally and conclude that they must be members without delinquencies of any kind . . . . General Counsel believes that a union, as part of its duty of fair representation, must refrain from leading employees to believe that their union-security obligations are broader than they are in law. In any event, the union must not leave them confused as to what their obligations are.

Counsel for Respondent, obviously, disagrees with this reasoning, arguing, initially, that the meaning of the word "membership'' was not changed by *Beck*. It had long be interpreted by the Board and Courts to mean solely a financial obligation, not that an employee is required to participate in union affairs: "the nature of membership as a purely financial obligation has never been in doubt for the past 45 years.'' Counsel states further that the Board and Courts have been interpreting these cases for 30 years since *General Motors*, "and until now no suggestion had ever been made that the Board's own model *Keystone Coat* language is unlawful.'' Respondent's brief states further:

> This case concerns purely the issue whether the maintenance of the Board's proposed model language in a contract is itself illegal. For the General Counsel to attempt to effect such a retroactive change in the law when the Board itself has not overruled the portion of *Keystone Coat* proposing this language presents a serious question of entrapment.

Respondent's brief also addresses the General Counsel's allegation that either the union-security clause or the Respondent itself, must inform the employees of their *Beck* rights prior to the expiration of their first 30 days of employment:

> General Counsel seeks a presumption that the union intends to construe the clause illegally because it does not incorporate into the clause itself the legal glosses put on the term since 1947. No such presumption is permissible under federal labor law. . . . Collective bargaining agreements contain many terms of art that those not schooled in labor law, as undoubtedly most workers are not, may misinterpret. There is no requirement in the Act that parties with knowledge inform those who lack it. For example, employers have no obligation to advise employees of their rights to union representation under *NLRB v. Weingarten, Inc*., 420 U.S. 251 (1975). . . . So long as unions do not attempt to enforce an illegal construction of the union security clause, there is no reason to treat this obligation differently from any other.

The brief of Charging Party states that *General Motors* "has been the law of the land for 29 years. It is time that the Board acted to ensure that unions truthfully disclose those principles.'' The brief cites *Teamsters Local 13 (Mobile Concrete)*, 268 NLRB 930 (1984), in support of the proposition that a union is "obligated to truthfully advise him of his available options, including his option of being only a non-member and `financial core' payer.'' I find this case inapposite to the facts herein. The *Teamsters* case involved a threat to have an employee fired for being delinquent in his dues. The Board found a violation because the union's delinquency notice to the employee was not clear and unambiguous, and was not as specific as the Board requires in these cases. I therefore will not rely on this case.

I recommend that this portion of the complaint be dismissed. The General Counsel is asking me (first) to find that the union-security clause herein is unlawful on its face because it does not inform those reading it of their *Beck* rights. This language conforms with the model language proposed by the Board in *Keystone* 34 years ago. Overturning such longstanding precedent, with such little support, is for the Board to initiate, rather than a judge. Additionally, to accept the General Counsel's argument, I would have to find that whenever there is a Board or court decision changing the law that affects employee rights, all existing contracts would have to be changed to explain the new law to employees, if one can presume that employees actually read the contracts that regulate their working conditions. Counsel for Respondent, in its brief, cites the *Weingarten* analogy to rebut the General Counsel's argument. One can go further, as well. Many contracts contain nondiscrimination clauses; must the contract explain *Wright Line*, 251 NLRB 1083 (1980), and any subsequent refinements or modifications? There are other provisions that might have to be explained as well. As a result of this, contracts might begin to resemble Hornbooks on labor law, rather than agreements regulating relationships between unions and employers.

I would likewise recommend dismissal of the General Counsel's further argument in this regard that Respondent violated the Act by not affirmatively notifying all employees hired since May 1989 of their *Beck* rights to remain in Schreiber's employ while being nonmembers of Respondent. It is true that the contract between Schreiber and the Respondent does not explain *Beck*, nor did Respondent explain to the employees who were hired after May that they had the right under *Beck* to refuse to join the Respondent and to pay certain amounts to the Respondent in lieu of dues. However, placing an affirmative obligation on every union with a *Keystone* union-security provision to inform all new employees of their *Beck* rights is a remedy that is not warranted here. The General Counsel cites cases for the proposition that a union has a duty to inform employees whom it represents about matters affecting their employment. These cases involved a union's failure to notify employees of a change in the hiring hall rules, the failure to allow employees to inspect hiring hall records, the refusal to give employees copies of its contract and health and welfare plan or to inform them of an interim agreement reached with their employer which affects their conditions of employment, the failure to notify employees of an arbitration award that affected their seniority and recall rights and purposely keeping employees uninformed or misinformed regarding their grievances. In addition, the General Counsel cites cases similar to *Teamsters*, supra, regarding a union's obligation to be specific in what an employee must pay in dues, which I have already found to be inapposite.

I find that these cases cited by the General Counsel are not dispositive of the facts here and the remedy requested. These cases all involve rights arising from contract provisions such as

hiring halls, grievances and arbitrations. In the instant matter, the cause of the "problem'' emanates not from the contractual relationship or the employer-employee relationship, but rather from a Supreme Court decision altering existing Board law. I can find no precedent for requiring a union to notify employees or members of changes in the law that might affect their conditions of employment. Such a requirement would tax a union's resources to such an extent that they would have little time or money to engage in bargaining or organizing activities.

The General Counsel and the Charging Party next argue that, in addition to these Board cases, there are Court cases under the Railway Labor Act (RLA), and cases involving public sector employees which support their position that unions have an affirmative duty to notify employees of their *Beck* rights to be a financial core member only. As Administrative Law Judge Heilbrum stated in *Television Artists AFTRA, Portland Local (KGW Radio)*, issued October 23, 1991:

> Against this decisional background two major points should be noted. First, this is not a public employee sector case, and secondly this proceeding arises under the Board's statutory jurisdiction to prevent unfair labor practices as contrasted with Federal Court litigation where powers and considerations of the forum are so much broader.

I reject this argument of the General Counsel and the Charging Parties for two reasons: it is not clear that these RLA and public sector cases were meant to apply to Board cases, and even if they did, they appear to set forth the rules on how unions are to treat objectors, not, as is being discussed above, whether the Respondent has an affirmative obligation to inform all employees of their *Beck* rights prior to their thirty first day of employment. In regard to the first point, Administrative Law Judge Anderson, in *California Saw & Knife Works*, issued on May 29, 1992, states:

> I find it is not at all sure that the Board would view a decision of a federal court in a duty of fair representation lawsuit dealing with *Beck* rights and procedures, even under the National Labor Relations Act, as controlling Board Section 8 determinations or requiring reversal of existing contrary Board unfair labor practice case law. The Board has historically undertaken its own analysis and there may be differing standards under the duty of fair representation as applied by the Courts and as applied by the Board.

Judge Anderson also stated, citing *Waco, Inc*., 273 NLRB 746 (1984), that Board judges have long been admonished to follow Board precedent, rather than contrary Court precedent, until the Court cases are followed by the Board or affirmed by the Supreme Court. I agree with this and find that it is another reason not to follow the Court cases cited by the General Counsel. I therefore recommend that these allegations, paragraphs 11(i) and (ii) of the complaint, be dismissed.

IV. EXPENDITURES AND NOTICE—FACTS AND ANALYSIS

Paragraph 11 of the complaint further alleges that Respondent has maintained and given effect to a procedure that is contrary to the requirements of *Beck* in that it:

> (iii) charges objectors for expenses incurred for activities outside the bargaining unit.
>
> (iv) fails to provide objectors with timely and sufficient information regarding expenditures made by Respondent.
>
> (v) fails to provide objectors with timely and sufficient information regarding expenditures made by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the International), an agent of Respondent. And
>
> (vi) requires objectors who wish to challenge Respondent's determination of its chargeable and nonchargeable expenditures to first exhaust an internal union appeals procedure, thereby improperly delaying a challenger's access to a neutral arbitral process.

The final of these allegations will be discussed separately below.

This matter involves solely the Pirlotts, the only nonmembers employed by Schreiber in the bargaining unit. S. Pirlott began her employ with Schreiber in 1963 and joined Respondent at that time. D. Pirlott began his employ with Schreiber 10 years later and joined Respondent shortly after that. By letter dated September 20, they wrote to Respondent: "Effective immediately, Mr. David Pirlott and Mrs. Sherry Pirlott are resigning our memberships in the Teamsters Union. We will meet any financial core obligation we are requested to. However, we strongly object to paying for any non collective bargaining activity.'' By letter dated October 19, Gegare acknowledged the Pirlott's letter and said that their resignations would be effective September 20. In addition to stating the method for challenging the Respondent's determinations (the legality of which will be discussed separately below), the letter notified the Pirlotts of Respondent's interpretation of *Beck* and their breakdown of expenditures:

> Non-members have a legal right, which you have exercised, to make a written objection to spending Union dues money on political and charitable activities unrelated to collective bargaining. According to our most recent audit, 1.1% of Local 75's expenditures were spent on such unrelated activities during the last year. This letter provides you with detailed information concerning the breakdown between representational and non representational expenses.

The letter stated that the attached schedule was prepared by an auditor for Respondent who was a certified public accountant in the State of Wisconsin:

> Of the current Union dues applicable to a person in your classification, the non-chargeable amount is 23 cents. Subtracting that from the total normal dues amount of $21.00 leaves $20.77. We have therefore instructed Schreiber Cheese to begin deducting pursuant to the check-off authorization which you previously signed, the sum of $20.77 per month from your paychecks.

Attached to this letter was the following one-page "Schedule of Expenses and Non-Chargeable Expenses Year Ended December 31, 1988'':

	1988 Expense	Nonchargeable
Per Capita Tax	$253,202	$6,299
Salaries	482,273	0
Expense Allowance	18,505	0
Contributions	700	700
Benefits	94,555	0
Professional Fees	9,058	0
Taxes	35,721	0
Meeting and Committee	10,177	0
Automobile	10,232	0
Out-of-Town Travel	22,478	0
Education & Publicity	19,127	4,537
Stewards	17,235	0
Building Maintenance	5,511	0
Administrative	110,123	0
Total Expenses	**$1,088,897**	**$11,536**
Percent Nonchargeable	**1.1%**	

By letter dated November 1, the Pirlotts wrote to Respondent that this financial disclosure was "woefully inadequate'' to explain how Respondent calculated their fee:

> Your "disclosure tells us nothing about how Local 75 arrived at these figures.'' There is nothing in your letter, other than your self serving statement, to indicate that your calculations were in fact subjected to an independent and high level audit.
>
> Finally, your October 19 letter provides no information about the Teamsters International, the AFL–CIO, and all of the other groups with which Local 75 is affiliated.

The letter (which also rejected Respondent's appeal procedure, which will be discussed separately below) then demanded that all their fees be placed in an escrow account.

By letter dated November 8, Gegare answered the Pirlott's letter by repeating that the nonchargeable percentage of Respondent's expenditures that were spent on political and noncollective-bargaining activities was 1.1 percent and that in the future Respondent would deduct "only the 98.8 percent of your dues spent on lawful, chargeable activities. (The missing .1 percent is not explained.) The letter also stated that this money would be placed in escrow, which it has. The letter states further that at the conclusion of the new fiscal year and audit, Respondent would send them another notice of their opportunity to object to the Respondent's expenditures. Pirlott testified that since this November 8 letter he has received no further information from the Respondent regarding the breakdown of their expenses, although the amount of dues deducted from his pay went down "a little bit.'' Pirlott's wife also testified that she could not remember receiving any such information from Respondent since the November 8 letter, although there has been an adjustment in the amount deducted from her pay, and a $1.65 refund from the Respondent.

Gegare testified about, and identified five letters he wrote to the Pirlotts or to Schreiber, with copies to the Pirlotts. By letter dated March 21, 1990, Gegare informed them, inter alia, that because the International had reduced its per capita charge, they would soon be receiving a refund check in the amount of $1.65. Two days later, Gegare wrote a letter to Schreiber informing them of this. By letter dated April 27, Respondent informed the Pirlotts that the auditor had completed his audit for 1989 and had determined that the nonchargeable expense percentage was 3.2 and then determined the amount of dues that would be therefore deducted from their pay. As dues are determined by the employees' hourly rate, the letter stated that $22.94 would be deducted from S. Pirlott's pay (as compared to $23.70 regular dues), and that $21.20 would be deducted from D. Pirlott's pay (as compared to $21.90). Although this letter does not refer to an attachment or enclosure, attached to this exhibit is a breakdown of Respondent's expenses for the calendar year ending December 31. The principal difference between this breakdown and the one for 1988 is that in the 1989 breakdown, for the per capita tax category, $29,235 is nonchargeable, as compared to $6299 for the prior year. Also, in 1989 there was no category of "expense allowance.'' The percent nonchargeable in 1989 was determined to be 3.2 percent. By letters dated April 16, 1991, Respondent notified Schreiber's payroll department that 54 cents of the dues of the Pirlotts (2.7 percent) was not chargeable and should therefore be adjusted.

In order to determine the legality of Respondent's notice to the Pirlotts, it is necessary to know of Respondent's operation. Respondent represents approximately 4000 members in about 143 bargaining units. Approximately 1600 of these members are in the dairy industry and 600 in the food processing industry. Respondent also represents employees employed in the public sector, such as crossing guards for the city of Green Bay. Respondent pays per capita taxes to the International, Wisconsin Joint Council 39 and to the Central Conference of Teamsters. Respondent has 7 officers, from president to trustee, and 11 employees, including 6 business agents, clerical, administrative, and custodial employees. Of the six business agents, two are assigned to warehousing and public sector, two to dairy, and two to freight and malt houses. Gegare testified that at all times, and since 1989, Respondent has attempted to organize employers in the dairy industry and the food processing industry. He testified that one reason for such organizing is "to have parity within our organized groups'':

> We try and get these people organized to bring their wages and benefits up because when we go to the bargaining table one of the biggest complaints is from the employers like Schreibers is that we have too much nonunion competition out there that they are hurting us on the market.

The International negotiates one contract for Respondent, the National Master Freight Contract, covering 246 of Respondent's members. Respondent processes the grievances under this contract and negotiates all other contracts.

I found Gegare to be an open and credible witness and credit his testimony that the above-mentioned letters were sent to Schreiber and the Pirlotts. That is not to say that I found the Pirlotts to be less than credible witnesses, as they were unsure about any post-1989 notices, but seemed to recollect some adjustments to their dues. The issue therefore is whether the expense breakdown contained in the October 19 and April 27, 1990 letters satisfy the *Beck* requirements.

The General Counsel alleges in its brief that Respondent violated Section 8(b)(1)(A) and (2) of the Act for a number of reasons. Initially, that its financial statement to the Pirlotts was insufficient for them to intelligently assess whether to file a challenge:

> instead of explaining the categories and charges, Respondent merely listed categories of expenditures, the total dollar amount it spent in such category and the dollar amounts it considered chargeable in each category.

Further, the General Counsel alleges that certain expenses were improperly charged:

> [I]ncluded among the chargeable expenses are 100% of salaries, expense allowance, benefits, professional fees, taxes, meeting and committee, automobile, out of town travel, building and administrative. There is no question but that some, if not the vast majority of these categories, included costs attributable to non-chargeable activities such as organizing.

In this regard, the General Counsel alleges that organizing is not chargeable under *Beck*. Finally, the General Counsel also alleges that Respondent's statement is deficient because it fails to explain how the International spends Respondent's per capita tax dollars. The statement says only that $6299 of the $253,202 is not chargeable.

The Charging Party's brief makes similar points: that the financial disclosure was inadequate to allow for an intelligent objection and gave no information on how the International, Wisconsin Joint Council 39, and the Central Conference of Teamsters spent the per capita money that Respondent sent them. Counsel also states that the financial disclosure was in error in charging the Pirlotts for expenses incurred in other of Respondent's units, when

> employees can only be charged for activities which their 9(a) representative and its affiliates perform in negotiation and enforcement of *their* governing collective bargaining agreement with their employer.

Respondent's brief emphasizes two points in this area. That the categories in Respondent's financial statement were easily understood and sufficient under the law, and that *Beck* objectors cannot refuse to pay for noncharitable and nonpolitical expenses incurred for other units:

> The breakdown provides 14 categories of expenditures and the chargeable and non-chargeable percentage in each. The categories are functional in nature rather than legalistic; they identify the type of service or product on which money was expended rather than the aspect of the union's mission achieved by the expense.

The brief argues that the notice is adequate, citing *Dashiell v. Montgomery County*, 925 F.2d 750 (4th Cir. 1991), in which the court stated:

> The test of adequacy of the initial explanation is not whether the information supplied is sufficient to enable the employee to determine in any final sense whether the union's proposed fee is a correct one, but only whether the information is sufficient to enable the employee to decide whether to object. . . . Thus, in its initial explanation to non-union employees, the union must break its expenses into major descriptive categories and disclose those categories or portions thereof which it is including in the fee to be charged.

The brief also cites *Hudson v. Chicago Teachers Local 1*, 922 F.2d 1306 at 1314 (1991), which stated that the "role of the federal courts in reviewing the adequacy of a fair share notice is to determine whether the notice gives the nonunion members enough information to challenge the basis for the fee.'' Counsel states: "Finally, as a practical matter, the disclosure here by Local 75 indeed tells the charging parties all they need to know to decide whether to object.''

Respondent's brief next argues that unions can charge objectors for appropriate expenses incurred outside of their bargaining unit:

> The General Counsel now attempts to broaden this [*Beck*] holding to exempt non-members from paying for any expenditure that is not made in his or her particular bargaining unit. The standard is thus changed from "germane to collective bargaining'' to "germane to my particular bargaining unit'' from the perspective of each objector. . . . Logically, the General Counsel's position is tantamount to saying that each union agent, secretary or other employee would have to keep detailed time records, such as those kept by an attorney, to account for each minute spent in the service of any particular unit.

As rationalization for this argument, counsel states:

> The value of union representation is not measured in how many minutes the union's business representative spends in or near the objector's employing facility. The mere existence of the union representation, like a mutual defense treaty or an insurance contract, benefits those covered by its ambit because of the availability of help if problems arise, not merely when they arise.

The issues therefore are whether, under *Beck*, Respondent's financial disclosure was adequate, and whether the figures were appropriate. The ultimate decision on this latter issue will depend upon whether a union may lawfully attempt to charge objectors for expenses outside of their units.

In *Beck*, the Court referred to *Machinists v. Street*, 367 U.S. 740 (1961):

> In *Street* we concluded "that Sec. 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes,'' but that Congress did not intend "to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose.''

The Court concluded in *Beck*:

> We conclude that Sec. 8(a)(3), like its statutory equivalent, Sec. 2, Eleventh of the RLA, authorizes the exaction of only those fees and dues necessary to "performing the duties of an exclusive representative of the employees in dealing with the employer on labor management issues.''

The Court, in *Railway Clerks v. Allen*, 373 U.S. 113 (1963), referred to the chargeable expenses as those "germane to collective bargaining'' and that "the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor management issues.''

I find that the information provided by Respondent in the 1988 financial disclosure sent to the Pirlotts and the 1989 disclosure, presumably, also sent to them was inadequate under the law. It is clear that absolute precision is not required of the unions in these situations, but the employees must be given

adequate information with which to make an informed choice as to whether he or she should dispute any of the figures. In *Chicago Teachers Local 1 v. Hudson*, 475 U.S. 292 (1986), the Court, citing *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), stated:

> Since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion. . . . . Basic considerations of fairness, as well as concern for the first amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the non union employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information—does not adequately protect the careful distinctions drawn in *Abood*.

Respondent's financial disclosure for the year ending December 31, 1988, contains 14 categories; 11 were totally chargeable, 1 (contributions) was totally nonchargeable, and one (per capita tax) was split, 97 percent chargeable. These categories do not provide sufficient information from which the employees can intelligently decide if the fee is proper. Most of the categories should have been further explained or detailed. For example, the per capita tax should be separated by the recipient of the tax and how the Respondent determined that $6299 was nonchargeable. Additionally, "expense allowance,'' "benefits,'' "taxes,'' "meeting and committee,'' "automobile,'' "out-of-town travel,'' "education and publicity,'' and "administrative'' are so inexact as to be of little assistance to an employee attempting to gauge the propriety of the union's charges. I therefore find that the information that Respondent provided the employees on the financial disclosures was insufficient for the employees to make an informed choice as to whether to object. Respondent therefore violated Section 8(b)(1)(A) and (2) of the Act.

The Supreme Court in *Beck* did not clearly delineate the boundaries regarding chargeable and nonchargeable expenses. The Court did authorize unions to collect dues and fees necessary for them to perform the duties of dealing with an employer as the collective-bargaining representative of its employees. The Court in *Railway Clerks v. Allen*, supra, referred to chargeable expenses as those germane to collective bargaining. That still leaves a large undefined area. What about a union's expense in organizing other employers, whether competitors of the signatory employer or not, and a union's expense in handling grievances and arbitrations for employees of other employers. Are these nonunit expenses chargeable?

In *Ellis v. Railway Clerks*, 466 U.S. 435 at 448, the Court stated:

> [O]bjecting employees may be compelled to pay their fair share of not only the direct costs of negotiating and administering a collective bargaining contract and of settling grievances and disputes, but also the expenses of activities and undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit.

In *Lehnert v. Ferris Faculty Assn*., 500 U.S. 507 (1991), the petitioners alleged that the local union should not be allowed to use dissenter's fees for activities that were not undertaken directly for their bargaining unit. The Court rejected this argument:

> While we consistently have looked to whether nonideological expenses are "germane to collective bargaining,'' we have never interpreted that test to require a direct relationship between the expense at issue and some tangible benefit to the dissenters' bargaining unit. [Citation omitted.] We think that to require so close a connection would be to ignore the unified-membership structure under which many unions, including those here, operate. . . . The essence of the affiliation relationship is the notion that the parent will bring to bear its often considerable economic, political, and informational resources when the local is in need of them. Consequently, that part of a local's affiliation fee which contributes to the pool of resources potentially available to the local is assessed for the bargaining unit's protection, even if it is not actually expended on that unit in any particular membership year.

The Court concluded:

> [A] local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit. This conclusion, however, does not serve to grant a local union carte blanche to expend dissenters' dollars for bargaining activities wholly unrelated to the employees in their unit. . . . There must be some indication that the payment is for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization. And, as always, the union bears the burden of proving the proportion of chargeable expenses to all expenses.

Shortly thereafter, *Pilots Against Illegal Dues (PAID) v. ALPA*, 938 F.2d 1123 (10th Cir. 1991), issued. In this case, *PAID* alleged that its union, ALPA, was impermissibly charging them for expenses incurred in activities at other airlines. After citing and discussing *Lehnert*, the Court stated:

> The evidence here suggests that a contract negotiated on behalf of one ALPA unit is subsequently used as a bargaining tool for another unit. In light of this relationship, it is not unreasonable to determine the plaintiff's agency fee by pooling the negotiating expenses of these units and dividing the costs among the represented employees.

The Court also found that ALPA's litigation expense challenging another airline's bankruptcy petition could not be charged to these employees because they were not directly concerned with it, and would not benefit in any significant way from the litigation.

Common sense also dictates that unions should be allowed to charge employees for organizational and collective-bargaining expenses, even when it is in a different unit. As the Court stated in *PAID*, after a union has negotiated an agreement with an employer, that agreement often serves as a bargaining tool, at least, at employers in the same or a similar industry, and will often cause an employer to improve his offer to the union to approach what his competitor agreed to. A union's organizational expenses should likewise be treated in somewhat the same manner. Most employers are not philanthropists willing

to pay their employees whatever they want. Rather an employer will usually agree to a competitive wage that it can afford. When a union organizes other employers in the industry, and executes contracts with these employers, others in the industry can, competitively, be more flexible than if they were the only organized shop in the industry.

However, I do not believe that this is true when a union represents private, as well as public sector employees, such as herein. The fact that the crossing guards for the city of Green Bay are represented by the Respondent, and Respondent has a contract with the city for these employees, probably has little or no effect on Schreiber or the ultimate terms and conditions of employment of its employees. Schreiber's concern is what other employers in the cheese and dairy industry in the area are paying their employees and how much it can afford to pay its employees, while remaining competitive. Whether or not school guards for the city of Green Bay, or other public sector employees, are organized, and how much they are paid, is of little or no relevance to Schreiber.

Respondent represents a substantial number of employees in public sector employment, although this number represents less than half of its total membership. Clearly, Respondent charged the Pirlotts for its expenses in organizing and representing these public sector employees. This is clear because Respondent never separated public and private sector expenses in the financial disclosure, and the Pirlotts paid 100 percent for "salaries'' and other categories that included Respondent's two business agents who cover the public sector employees. Because I find no "indication that the payment is for services that may ultimately inure to the benefit of the members,'' *Lehnert*, I find that Respondent improperly charged the Pirlotts for these expenses and therefore violated Section 8(b)(1)(A) and (2) of the Act.

Although I have found that Respondent violated the Act as alleged in paragraphs 11(iii) and (iv) of the complaint, I should also note that I found Respondent's 1988 financial disclosure alleging that only 1.1 percent of all their expenses were nonchargeable so implausible as to be a per se violation. Even putting aside the chargeability of its expenses in the public sector, I find it hard to believe that only 1 percent of all its expenses were what the Board and Courts would consider to be nonchargeable expenses. Although it is not possible to delineate a precise percentage that a union cannot exceed in determining its chargeable expenses, I find Respondent's 1988 calculations to be so egregious as to require little or no further review.

The remaining allegation in this area is paragraph 11(v) which alleges that Respondent failed to provide objectors with timely and sufficient information about the International, an agent of Respondent. The only record evidence that the International is an agent of Respondent is that the International negotiates one contract for Respondent covering 246 of Respondent's members; after the contract has been executed, Respondent handles grievances arising under the contract. That is clearly not enough to establish that the International is an agent of Respondent, and I therefore recommend that the allegation in paragraph 11(v) be dismissed. However, I believe that Respondent was obligated to inform the Pirlotts, and other potential objectors, how their money that is sent to the International, Wisconsin Joint Council 39 and the Central Conference of Teamsters is spent. Although I see the difficulty that this entails, 25 percent of the Respondent's funds go to these entities. If the *Beck* restrictions on charging objectors only for certain expenses are to be properly monitored, the employees must be told where all the union's money is going, not just 75 percent of the money. As this is covered above in my finding that Respondent violated the Act by not properly documenting its expenses in its financial disclosures, no additional violation need be found here.

V. THE REQUIRED APPEAL PROCEDURE—FACTS AND ANALYSIS

The basis of this allegation is the Respondent's procedure for challenging and appealing from Respondent's financial disclosure. The Pirlotts were informed of the procedure in Gegare's letter to them of October 19. The procedure requires that challenges must be received by Respondent within 14 days of the objector's receipt of the disclosure. The objections will then be heard, within 14 days, by Respondent's executive board and any appeal from that decision must be filed within 10 days of the decision. The appeal will be heard by an arbitrator selected from a panel of five neutral arbitrators chosen from the Wisconsin Employment Relations Commission (WERC). The employee and the Respondent will alternately strike names from the list until one remains. That individual will hear and decide the case. This decision shall be final and binding on all parties, with no further appeal. In their letter to Gegare, dated November 1, the Pirlotts rejected this procedure: "We will not go before the union's `Executive Board', and you can not legally make us do so as a condition of protecting our rights under *CWA v. Beck*.''

In *Chicago Teachers*, supra, the union established a three-part appeal for objections by nonmembers. Initially, the objector had to write to the union president within 30 days of the first payroll deduction. The first stage of the union's procedure was to the union's executive committee, which was to consider the objection and notify the objector of its decision within 30 days. If the objector disagreed with that decision, he had to appeal within 30 days to the union's executive board, which would consider the objection. Appeal of that decision was to an arbitrator selected by the union from a list supplied by the Illinois Board of Education. The Court found this procedure defective:

> because it did not provide for a reasonably prompt decision by an impartial decisionmaker. Although we have not so specified in the past, we now conclude that such a requirement is necessary. The nonunion employee, whose First Amendment rights are affected by the agency shop itself and who bears the burden of objecting, is entitled to have his objections addressed in an expeditious, fair, and objective manner.

The Court found that the union's procedure did not meet this requirement because, quoting the Seventh Circuit's decision, the "most conspicuous feature of the procedure is that from start to finish it is entirely controlled by the union.'' The first two steps of the review procedure are made by union officials, and the third step is also defective because it provides for an arbitrator chosen solely by the union. I find that the appeal procedure adopted by the Respondent satisfies the requirements set forth in *Chicago Teachers*, supra. Clearly, that case did not prohibit internal union appeals; only those procedures that are controlled by the union and do not provide for a "reasonably prompt decision by an impartial decisionmaker'' are prohibited. In the situation here, the first step is a hearing before Respondent's executive board within 14 days of the receipt of the employee's appeal. The procedure provides for a "prompt deci-

sion'' by Respondent's executive board. Appeals from this decision (within 10 days) go directly to WERC, which will supply a list of five neutral arbitrators; each side will alternately strike one until only one name remains, and that individual will hear and decide the case. Respondent pays any WERC fee, as well as the cost of the arbitrator. find that these procedures are fair and reasonable and are not proscribed by *Chicago Teachers*. I therefore recommend that this allegation be dismissed.

CONCLUSIONS OF LAW

1. Schreiber is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(b)(1)(A) and (2) of the Act as alleged in paragraphs 11(iii) and (iv) by failing to provide objectors with information on Respondent's expenditures sufficient to make an informed choice about objecting to any of the expenditures and by charging objectors for expenditures Respondent incurred in organizing and representing employees employed in the public sector.

4. Respondent did not violate the Act as further alleged in the complaint, more specifically, paragraphs 10(c), 11(i), (ii), (v), and (vi), 12, and 13(b)(iii), and it is recommended that these allegations be dismissed.

REMEDY

Having found that Respondent has engaged in, and is engaging in, certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action necessary to effectuate the policies of the Act.

As I have found that Respondent violated the Act by supplying objectors with insufficient information from which to base a decision on whether to object to Respondent's expenses, I shall recommend that Respondent be ordered to issue yearly reports of its expenses in more detail as to the nature of the expenses and whether the expenses were incurred for its members employed in the private sector or the public sector. As I also found that Respondent unlawfully charged objectors for expenses incurred in organizing and representing its members in public sector employment, I shall recommend that Respondent be ordered to reimburse the Charging Parties for the amounts that they were improperly charged. Such reimbursement shall be in accordance with the interest computation prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order is omitted from publication.]